BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: REUBEN M. Claimant, vs. REDWOOD COAST REGIONAL CENTER, Service Agency.	OAH No. N 2007020838

DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Eureka, California, on April 30, 2007.

Claimant was represented by his mother, Victoria M.

The service agency was represented by Nancy Ryan, Attorney at Law.

The matter was submitted for decision on April 30, 2007.

ISSUE

The issue in this proceeding is whether claimant is required to disclose the terms of a settlement he received so that the service agency can determine whether the settlement funds should or must be used to pay for some or all of the services the service agency is being asked to provide to claimant.

FACTUAL FINDINGS

1. Claimant is 16 years old. He has been a regional center consumer from birth with a qualifying condition of quadriplegic athetoid cerebral palsy. Claimant's parents are divorced and share joint legal custody of their son. Claimant's father, who lives in Sacramento County, had primary physical custody of him until late 2006, when a court granted primary physical custody to claimant's mother, who lives in Humboldt County.

Because he had primarily resided in Sacramento County (claimant spent the summer months and various weekends and holidays with his mother), claimant was a consumer of the Alta California Regional Center (ACRC). Responsibility for his case was transferred to the Redwood Coast Regional Center on December 1, 2006.

2. In 1995, claimant obtained a settlement of a medical malpractice claim relating to the care and treatment he received in connection with his birth. ACRC was aware of this settlement. In fact, in 2001, when claimant sought to have ACRC pay the cost of retrofitting his van, one of the defenses the regional center raised was the assertion that under Welfare and Institutions Code section 4659[1] claimant's settlement was a resource claimant was "required to look to" for the payment of the costs of retrofitting the van. Subsequently, in a decision dated March 19, 2001, Administrative Law Judge Ann E. Sarli wrote:

> The Regional Center maintains that claimant's trust fund, insurance settlement and family savings constitute outside sources of funding under section 4659, and his family, as "private entities" under subsection (a)(2) should use these available funds to pay for the retrofitting. The Regional Center is in error. Nowhere in section 4659 is it contemplated that families should be prevailed upon to pay for services and supports necessary due to their children's disability. Such a requirement would establish a means test for eligibility for Regional Center services. The Lanterman Act does not subject the consumer's family to a means test. The Lanterman Act does not provide services and supports only to the indigent and does not require a family to demonstrate that it cannot afford to pay for a needed support or service before the Regional Center will pay for it.

3. In 2004, ACRC suggested to claimant's parents that they apply for Medi-Cal benefits for claimant. Claimant's mother was advised that eligibility was based solely upon claimant's disability and that when completing the application she could write "n/a" whenever financial details were requested. Claimant was approved for and received Medi-Cal benefits and, in conjunction with that, In Home Supportive Services, from Sacramento County.

4. During an interview for a transfer of claimant's Medi-Cal benefits from Sacramento County to Humboldt County, claimant's mother mentioned that her son had a "trust account."[2] She was asked to disclose information about the 1995 settlement. Citing a

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[1] Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

[2] Claimant's mother testified that she misspoke when she referred to a "trust account." She stated she should have referred only to the "settlement," since the funds are not held in a trust account. The parties have tended to use the terms "trust" and "settlement" essentially interchangeably, and they are

confidentiality clause in the settlement agreement, claimant's mother declined to do so. Humboldt County then denied the inter-county transfer because of a failure to provide that information. Claimant's mother appealed. Writing for the Department of Health Services, Administrative Law Judge Nina R. Elsohn upheld the denial in a decision dated December 20, 2006. Judge Elsohn wrote that Medi-Cal regulations provide that "[p]roperty which the applicant . . . has the legal right, power, and authority to liquidate is considered available and is used in determining [Medi-Cal] eligibility." She held that information about claimant's assets (i.e., whether they were available to him) was therefore relevant to determining his eligibility and that claimant's mother had not established good cause for refusing to disclose terms of the settlement. Judge Elsohn further noted that claimant's mother "should realize that disclosing the information does not guarantee eligibility because the property limit for one person on Medi-Cal is $2000 in available property." Because she knew claimant had more than $2,000, claimant's mother therefore concluded that claimant would be ineligible for Medi-Cal under any circumstances and she elected not to pursue the issue any further.[3]

5. The service agency learned of the denial of Medi-Cal benefits, and therefore of the existence of the settlement, in early January 2007. Claimant's mother was asked to disclose the terms of the settlement and she once again declined, citing the settlement agreement's confidentiality clause. Further discussions between the parties ensued and later in January claimant's mother sent to the service agency copies of both that confidentiality clause and the March 29, 2001 decision holding that ACRC could not consider claimant's settlement as an outside source of funding for services the regional center would otherwise be obligated to provide.

6. In response, on February 13, 2007, Clay Jones, the service agency's executive director, sent claimant's mother a letter outlining the service agency's position. Jones cited section 4659, subdivision (a), for the proposition that regional centers are required to "identify and pursue all possible sources of funding for consumers receiving regional center services," including "(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer." He went on to say that "[r]egional centers have long understood" that "private entities" within the meaning of this section included certain types of trusts. Therefore, the service agency needed disclosure of the terms of the settlement in order to determine if "[claimant's] trust fund meets the definition of a private entity [i.e., one that is 'legally liable for the cost of services, aid, insurance, or medical assistance to the consumer'], and if so, the types and amounts of services it is intended to fund." Regarding the prior decision relating to ACRC and

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so used in this decision. For purposes of resolving this matter, the form in which the settlement proceeds are held is irrelevant.

[3] A potential issued raised by the service agency was whether it would be obligated to fund services and supports that would normally be covered by Medi-Cal and In Home Supportive Services if claimant elected not to pursue Medi-Cal eligibility. While that issue is not yet ripe for determination, it appears from the regulation sections cited in the Medi-Cal decision that the fact that claimant has more than $2,000 in assets renders him unable to meet Medi-Cal eligibility requirements.

claimant's settlement, Jones stated, among other things, that the decision did not establish precedent and was therefore "specifically relevant only to the fair hearing case for which it [was] rendered."

7. On February 16, 2007, claimant's mother filed a fair hearing request on her son's behalf. The reason for the request was "to clarify that our family and my son's savings are not private entities; that [claimant] has a settlement – not a special needs trust." The service agency has prepared a "draft" Individual Program Plan for claimant. Claimant was advised by letter of April 23, 2007, that this draft IPP was "being done to keep in place those services" claimant had been receiving from ACRC pending the outcome of the fair hearing, which would "hopefully resolve once and for all the question of responsibility for funding many of the services and supports for [claimant]."

LEGAL CONCLUSIONS

1. In support of its request that claimant disclose the terms of the settlement he received, the service agency cites a number of statutory provisions:

Section 4646, subdivision (d), provides that services and supports in a consumer's IPP are to be "purchased by the regional center or obtained from generic agencies . . . ."

Section 4648, subdivision (a)(8), provides that "[r]egional center funds shall not be used to supplant the budget of any agency which has legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

Section 4652 provides that "[a] regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region."

And section 4659, which was cited in Clay Jones' February 13, 2007 letter, provides:

> (a) Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:
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> (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

> (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.
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> (b) Any revenues collected by a regional center pursuant to this section shall be applied against the cost of services prior to use of regional center funds for those services. . . .
>
> (c) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.
>
> . . . .

2. It is the regional center's position that certain funds received or held by a consumer constitute "private entities" within the meaning of section 4659, subdivision (a)(2). In particular, it is asserted that when a regional center consumer has received a settlement as a result of his disability, and when the terms of that settlement specify that the settlement funds are to be used to cover expenses engendered by his disability, then those funds are to be treated much like an insurance policy. To the extent the settlement is an available resource to meet claimant's needs, it must be tapped before the service agency will provide services to claimant. Therefore, it is argued, the service agency has the right to examine the terms of claimant's settlement to see if it is to be considered such a "private entity." The service agency concedes that if the settlement is silent as to the uses for which the settlement funds may be used, then the settlement would not be considered a private entity within the meaning of this subdivision.

3. The service agency's contention cannot be accepted. The California Supreme Court has held that the Lanterman Act (Act) is an entitlement act. (*Association for Retarded Citizens* v. *Department of Developmental Services* (1985) 38 Cal.3d 384.) Regional centers must therefore provide services to eligible consumers regardless of their, or their parents', financial status. (*Clemente* v. *Amundson* (1998) 60 Cal.App.4th 1094, 1103.) But the obligations of the state and the regional centers under the Act are not open-ended and without restriction. The most basic restriction, as set forth by the Supreme Court in *Association of Retarded Citizens*, is that developmentally disabled persons are entitled to receive at state expense "only such services as are consistent with [the Act's] purpose." (*Association for Retarded Citizens Services, supra,* at p. 393.) Other restrictions on the scope of the Act's entitlements are those specifically imposed by statute. As the court held in *Clemente*, "The state has accepted its obligation to pay for support services . . . regardless of the parents' financial status as a statutory entitlement – *unless the Legislature has created an exception to that policy*." (*Clemente* v. *Amundson, supra,* at p. 1103, italics added.)

4. In *Clemente*, the court was called upon to decide whether a regional center could impose a parental copayment for respite services. In section 4685, subdivision (c)(6), the Legislature had imposed a parental copayment for day care services. The regional center argued that it could also impose a copayment for respite services because child care was a component of both day care and respite services. In rejecting this argument, the court pointed out that in the listing of the types of assistance available through regional centers in section 4685, subdivision (c)(1), day care and respite care were listed separately. This was important because "section 4685 identifies respite and day care as separate types of assistance available to families caring for developmentally disabled children at home but expressly authorizes parental copayment *only* for day care. Had the Legislature intended to assess a copayment for respite services it had every opportunity to do so in the 1992 amendment which added copayment for day care." (*Clemente* v. *Amundson, supra*, 60 Cal.App.4th at p. 1105, original italics.) In furtherance of this point the court noted a number of other statutory provisions in which the Legislature had specifically limited entitlements under the Act. And the court rejected the regional center's argument that the directive of former section 4791, subdivision (c)(1), that regional centers seek "alternative sources of payment for services" provided a basis for the copayment requirement. The "vague language" of this subdivision, it held, could not be read to authorize copayment for respite services. (*Id*., at p. 1106.)

5. In sum, in holding that the regional center could not impose a copayment for respite services, the *Clemente* court established the principle that the Act's entitlements could not be limited "in the absence of express statutory authority." (*Clemente* v. *Amundson, supra,* 60 Cal.App.4th at p. 1097.) Here, there is no express statutory authority that permits the service agency to consider claimant's settlement – regardless of the reason for which that settlement was paid – as an available resource that must be tapped into (and presumably exhausted) before the service agency will provide him the services and supports he has requested. Nothing in the law permits the service agency to treat claimant's income or assets from his settlement any differently than it would treat income or assets from any other source, such as earned income, an inherited trust fund, lottery winnings, or income from a legal settlement resulting from an auto accident. To paraphrase the *Clemente* court, had the Legislature intended to have the proceeds of legal settlements treated as available resources that had to be utilized by a consumer before a regional center would fund services and supports, it certainly could have done so.

6. The service agency did not specifically argue that claimant's settlement constituted a "generic resource," but it cited in support of its position those portions of sections 4646 and 4648 relating to generic agencies. Neither of those sections is applicable. The term "generic resource" is not defined anywhere in the Act or in the Department of Developmental Services' regulations. Both the Act and the regulations define "generic agency" as "any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services." (§ 4644, subd. (b); Cal. Code Regs., tit. 17, § 54302, subd. (a)(31).) The regulations define "generic support(s)" as "voluntary service organizations, commercial businesses, non-profit organizations, generic agencies, and similar entities in the community whose services and products are regularly

available to those members of the general public needing them." (Cal. Code Regs., tit. 17, § 54302, subd. (a)(32).) It thus appears that when the modifier "generic" is used within the Act and regulations it refers to an agency or entity providing funds or services to all members of the public needing them. Claimant's purely individual legal settlement does not fall within this definition of "generic."

7. Claimant's legal settlement is not a resource that must be tapped before the service agency must provide necessary services and supports to claimant. It is not an "appropriate . . . alternative for care of a developmentally disabled person" and the service agency may not therefore require claimant to disclose the terms of his settlement for any purpose.

ORDER

Claimant's appeal is granted. He is not required to disclose the terms of his settlement to the service agency.

DATED: _____

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MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.